IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/09/2003

CORAM

THE HONOURABLE Mr. JUSTICE P. SATHASIVAM

W.P.No.10964 of 2003
and
W.P.M.P.No.13787 of 2003 & W.V.M.P.No.948 of 2003

V.T. Viswanathan .... Petitioner

-Vs-

1. Inspector of Panchayat and
District Collector,
Karur District, Karur.

2. The President,
Nerur South Panchayat,
Karur Taluk, Karur District. .... Respondents

Writ petition filed under Article 226 of The Constitution of India
praying for the issue of writ of certiorari calling for the records relating
to the proceedings made in Na.Ka.Aa.2/05/2003 dated 31.03.2003 on the file of
the 1st respondent and quash the same.
!
For Petitioner : Mr. S. Doraisamy
^

:
O R D E R

By consent of both parties, the main writ petition itself is
taken up for final disposal.

2. Because of the wrong interpretation of Inspector of
Panchayat and District Collector with reference to Section 202 of the
TamilNadu Panchayat Act 1994 and earlier order of this Court dated 24.02.2003,
the petitioner having no other option has approached this Court on third
occasion by filing the present writ petition.

3. It is seen that the petitioner is the resident of
Vedichipalayam Panchayat. He was selected as member of the ward No.8 to the
second respondent-Panchayat during 2001 Panchayat election. He was selected

for the post of Vice-President as unopposed. As Vice-President, he was empowered to sign the cheque along with the President of the Panchayat. According to him, since the President is not conducting meeting regularly and pressurising him to sign the empty cheques, he refused to do the same. Pursuant to the direction of this Court, the petitioner has made a representation to the first respondent on 10.01.20 03. Since the first respondent passed an order without conducting an oral enquiry on 11.2.2003 and rejected his request on the ground that the resolution was passed only after following the procedure, the petitioner filed another writ petition No.5756 of 2003. By an order dated 24.2.2003, this court directed the District Collector to reconsider the matter in the light of Section 202 (1) (i) (b) and to pass necessary orders. With the said direction, this Court quashed the order dated 11.2.2002 and remitted the same to the District Collector with a direction to pass orders within a period of four weeks from the date of receipt of a communication. Pursuant to the said direction, the first respondent has

passed the impugned order on 31.2.2003 rejecting the request of the petitioner. Questioning the said order, the petitioner has preferred the present writ petition.

4. The learned counsel for the petitioner after taking me through the earlier orders passed by this Court on two occasions, the proceedings of the second respondent Panchayat, representation of the petitioner etc. would contend that in spite of the specific order of this Court dated 24.2.2003, the District Collector has not conducted an enquiry and accordingly the impugned order is liable to be quashed. He further contends that in the light of the power conferred under Section 202 only in favour of the Inspector/District Collector and in the light of the specific direction by this Court, it is not open to the District Collector to delegate his power to his Personal Assistant to conduct an enquiry and decide the matter. He also contends that the first respondent failed to consider the claim of the petitioner in the light of the Section 206 of the Act.

5. On the other hand, learned Government Advocate after taking me through the order of the first respondent would contend that based on the report of the Enquiry Officer, the first respondent has considered the claim of the petitioner with reference to the materials placed and arrived at a conclusion rejecting his request. According to her, there is no ground for interference by this Court in this Writ petition.

6. I have carefully considered their rival submissions.

7. As stated earlier, it is third writ petition filed by the petitioner. In the light of the order to be passed here under. I am of the view that it is unnecessary for this Court to go into the merits of the claim made by the petitioner. Before going into the relevant provision, it is useful to refer the order by P.K. Misra,J dated 24.2.2 003 made in W.P.No.5756 of 2003. In that writ petition, the petitioner challenged the proceedings of the first respondent dated 11.2.2003 as well as the resolution pursuant to the agenda dated 30.12.2002 on the file of the second respondent-Panchayat. After hearing both sides and after holding that the

resolution referred therein has not been legally passed and the Collector failed to apply his mind regarding the applicability of Section 202(1)(i)(b) directed him to reconsider the matter and pass necessary orders. The order of the learned Judge finds place at Page Nos.13 to 17 of the typed set.

8. A perusal of the impugned order dated 31.3.2003 particularly reference No.6 shows that on direction by the District Collector, an enquiry was conducted by his Personal Assistant and he submitted his report on 26.3.2003. By pointing out that as per Section 202, it is the Collector to conduct an enquiry and take a decision one way or other learned counsel for the petitioner submits that authorising his Personal Assistant to conduct an enquiry cannot be sustained. In this regard, it is relevant to refer Section 202, which reads as under:

"202. Power to suspend or cancel resolution, etc. under the Act-
(1) The Inspector may, by order in writing
.....
(2) The Inspector shall, before taking action on any of the grounds referred to in clauses (a) and (b) of Sub-section (1), give the authority or person concerned an opportunity for explanation.

(3) The power conferred on the Inspector under clause (c) of subsection (1) may be exercised by the Collector in accordance with the provisions of that clause."

9. It is clear from Sub-Section 3 that the power conferred on the Inspector has to be exercised only by the Collector in accordance with the provisions of that clause and he cannot further delegate the same to other person.

10. I have already referred to the positive direction by this Court directing the District Collector to re-consider and pass appropriate orders after affording opportunity to the petitioner. In such circumstance, in the light of the fact that enquiry was conducted only by Personal Assistant to the District Collector the same cannot be accepted as compliance with Section 202 as well as earlier order of this Court. Though the learned Government Advocate contended that on the receipt of the report from the enquiry officer, the District Collector considered the issue elaborately and arrived at a conclusion, as explained above, the same is not in consonance with the provisions under Section 202 as well as specific direction of this Court.

11. It is also relevant to refer Section 206, which reads as under:

206. Removal of vice-president: (1) If in the opinion of the Inspector, the vice president wilfully omits or refuses to carry out or disobeys any provisions of this Act, or any rule, by-law, regulation, or lawful order made or issued under this Act or abuses any power vested in him, the Inspector shall by notice in writing, require the vicepresident to offer

within a specified date, his explanation with respect to his cases of omission or commission mentioned in the notice.
(2) The provisions of sub-sections (2) to (13) (both inclusive) of section 205 shall, as far as may be, apply in relation to the removal of the vice-president as they apply in relation to the removal of the president by the Inspector on his own motion."

12. A reading of the impugned order does not disclose that the first respondent has considered the claim of the petitioner with reference to above mentioned provision. On this ground also, the impugned order is liable to be quashed.

13. In the light of what is stated above, the proceedings of the first respondent dated 31.3.2003 is quashed and the matter is remitted to the first respondent to consider and pass orders in accordance with law as observed above within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is allowed. No costs. Consequently, W.P.M.P.No.13787 of 2003 is closed and W.V.M.P No.948 of 2003 is dismissed.

Index:Yes
Internet:Yes

sl

To

1. Inspector of Panchayat and
District Collector,
Karur District, Karur.

2. The President,
Nerur South Panchayat,
& W.V.M.P.No.948 of 2003